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Paper No. 24

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In re Application of
Brockhoff
Application No. 08/938,173
Filed: September 26, 1997
Attorney Docket No: P61957

**OFFICE OF PETITIONS
DECISION ON PETITION**

This is a decision on the petition under 37 CFR 1.137(b), filed January 29, 2001, to revive the above-identified application.

This petition is hereby **Dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. §704.

This above-identified application became abandoned for failure to timely file a proper response to a final Office Action which was mailed on March 22, 2000. The final Office Action set a three (3) month shortened statutory period for reply. Petitioner submitted an amendment and a three month request for extension of time on September 25, 2000 with a mail date of September 20, 2000. An Advisory Action mailed October 11, 2000 informed Petitioner the amendment did not place the application in condition for allowance and as such would not be entered. Accordingly, this application became abandoned on September 22, 2000. A Notice of Abandonment was subsequently mailed on December 5, 2000.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was intentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03 (c)(III)(C) and (D).

The instant petition lacks item (1) the required reply. The proposed reply required for consideration of a petition to revive after a final Office Action must be a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)), an amendment that prima facie places the application in condition for allowance, the filing of a continuing application or a Request for Continued Examination (RCE). See MPEP 711.03(c)(III)(A)(2) and 37 CFR 1.114.

Petitioner's submission of the September 25, 2000 amendment as the required reply is improper. Petitioner was informed via the October 11, 2000 Advisory Action the September 25, 2000 amendment did not place the application in condition for allowance as such the amendment would not be entered. Accordingly, this application cannot be revived.

The application is being forwarded to the Office of Initial Patent Examination for issuance of a corrected filing receipt, correction of the file jacket, and the Office Palm data to reflect the inventorship as corrected. Thereafter, the application will be returned to the Office of Petitions to await petitioner's response to this decision.

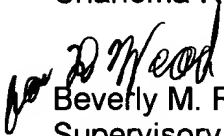
Further Correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
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By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
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Crystal Plaza 4, Suite 3C23
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Telephone inquiries concerning this matter should be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.


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for Patent Examination Policy